

LEGAL RIGHTS OF STUDENTS WITH ENVIRONMENTAL DISABILITIES

Submitted by Thomas Mela, Chief Attorney

Office for Civil Rights (OCR), Boston

United States Department of Education

Thomas.Mela@ed.gov

(617) 223-9679

Table of Contents

1. How to File a Discrimination Complaint with the Office for Civil Rights
2. OCR Letter to South Windsor (CT) Public Schools (April 2002)
3. OCR Letter to Torrington (CT) Public Schools (April 2002)
4. OCR Letter to North Smithfield (RI) Public Schools (August 2003)

HOW TO FILE A DISCRIMINATION COMPLAINT WITH THE OFFICE FOR CIVIL RIGHTS



Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-1100
(202) 205-5413; 1-800-421-3481
FAX: (202) 205-9862; TTY: (877) 521-2172
E-mail: OCR@ed.gov
Web: <http://www.ed.gov/ocr/>

The Office for Civil Rights (OCR) enforces several Federal civil rights laws that prohibit discrimination in programs or activities that receive Federal financial assistance from the Department of Education (ED). Discrimination on the basis of race, color, and national origin is prohibited by Title VI of the Civil Rights Act of 1964; sex discrimination is prohibited by Title IX of the Education Amendments of 1972; discrimination on the basis of disability is prohibited by Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 (Title II prohibits discrimination on the basis of disability by public entities, whether or not they receive Federal financial assistance); and age discrimination is prohibited by the Age Discrimination Act of 1975.

These civil rights laws enforced by OCR extend to all State education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, State vocational rehabilitation agencies, libraries, and museums that receive Federal financial assistance from ED. Programs or activities that receive ED funds must provide aids, benefits, or services in a nondiscriminatory manner. Such aids, benefits, or services may include, but are not limited to: admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing, and employment.

In addition, as of January 8, 2002, OCR enforces the Boy Scouts of America Equal Access Act. Under the Boy Scouts of America Equal Access Act, no public elementary school, public secondary school, or State or local education agency that provides an opportunity for one or more outside youth or community groups to meet on school premises or in school facilities before or after school hours shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America, or any other youth group listed in Title 36 of the United States Code as a patriotic society.

WHAT TO DO

Anyone wishing to file a formal complaint with OCR should submit in writing the following information in a letter or on the Discrimination Complaint Form available from OCR enforcement offices (see listing):

Your name and address (a telephone number where you may be reached during business hours is helpful, but not required);

A general description of the person(s) or class of persons injured by the alleged discriminatory act(s) (names of the injured person(s) are not required);

The name and location of the institution that committed the alleged discriminatory act(s); and

A description of the alleged discriminatory act(s) in sufficient detail to enable OCR to understand what occurred, when it occurred, and the basis for the alleged discrimination (race, color, national origin, sex, disability, age, or the Boy Scouts of America Equal Access Act).

HOW TO FILE AN ONLINE COMPLAINT

OCR encourages students and parents, representatives of education institutions, and other OCR customers to use e-mail or fax to communicate with OCR, whenever possible. Also, complainants may file a complaint with OCR, online, at the following website: <http://www.ed.gov/ocr/complaintprocess.html>.

For those without current e-mail accounts, Internet access may be freely available from your local public library, and free e-mail accounts are available from several large providers.

A recipient may not retaliate against any person who has made a complaint, testified, assisted or participated in any manner in an investigation or proceeding under the laws listed above.

WHO CAN FILE

Anyone who believes that an educational institution that receives Federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability, or age, or who believes that a public elementary or secondary school, or State or local education agency has violated the Boy Scouts of America Equal Access Act, may file a complaint. The person or organization filing the complaint need not be a victim of the alleged discrimination, but may complain on behalf of another person or group.

TIMELINESS

A complaint must be filed within 180 calendar days of the date of the alleged discrimination, unless the time for filing is extended by OCR for good cause.

INSTITUTIONAL GRIEVANCE PROCEDURES

Prior to filing a complaint with OCR against an institution, a potential complainant may want to find out about the institution's grievance process and use that process to have the complaint resolved. A complainant is not required by law to use the institutional grievance procedure before filing a complaint with OCR. If a complainant uses an institutional grievance process and also chooses to file the complaint with OCR, the complaint must be filed with OCR within 60 days after the last act of the institutional grievance process.

WHERE TO WRITE (see Note)

EASTERN DIVISION

Connecticut, Maine, Massachusetts,
New Hampshire, Rhode Island, Vermont
Office for Civil Rights, Boston Office
U.S. Department of Education
J. W. McCormack POCH, Room 701
Boston, MA 02109-4557 (617) 223-9662
FAX# (617) 223-9669; TDD (617) 223-9695

New Jersey, New York, Puerto Rico,
Virgin Islands
Office for Civil Rights, New York Office
U.S. Department of Education
75 Park Place, 14th Floor
New York, NY 10007-2146 (212) 637-6466
FAX# (212) 264-3803; TDD (212) 637-0478

Delaware, Maryland, Kentucky,
Pennsylvania, West Virginia
Office for Civil Rights, Philadelphia Office
U.S. Department of Education
Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107 (215) 656-8541
FAX# (215) 656-8605; TDD (215) 656-8604



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
REGION I
JOHN W. McCORMACK POST OFFICE AND COURTHOUSE, ROOM 701
POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109-4557

April 19, 2002

Dr. Joseph L. Wood
Superintendent of Schools
South Windsor Public Schools
1737 Main Street
South Windsor, CT 06074

RE: Complaint No. 01-02-1010

Dear Dr. Wood:

On October 22, 2001, the Office for Civil Rights (OCR) received a complaint against the South Windsor Public Schools (District), alleging that, on the basis of disability, the District discriminated against the Complainants' son (Student) by failing to provide an equal opportunity to receive a public education.

Specifically, the Complainants alleged that the District (1) failed to maintain its Smith Elementary School in a safe and usable condition for the Student, thereby denying him the benefits of the District's programs and activities, and (2) failed to conduct an evaluation of the Student in a timely and procedurally correct manner, thereby denying him a free appropriate public education.

The purpose of this letter is to inform you that, on the basis of actions the District has taken, and the commitments the District has agreed to take to address issues identified by this complaint, OCR is closing its investigation of the complaint.

OCR accepted the Complainants' allegations for resolution because they are within the jurisdiction of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibit discrimination on the basis of disability.

In investigating this complaint, OCR reviewed information the District provided, regarding the Student, its efforts to provide him with services appropriate to his disability, and its efforts to date to address the issue of the indoor air quality (IAQ) of its schools. OCR interviewed the Complainants, their educational advocate, District representatives and the Student's physician.

The first issue OCR considered was whether the District had failed to maintain its Smith Elementary School in a safe and usable condition for the Student, thereby denying him the benefits of the District's programs and activities. As the Complainants' concern was whether the IAQ of the Student's school was adversely impacting his ability to learn, OCR considered whether the District undertook a thorough analysis of the impact of the IAQ of the Student's school on him.

The District informed OCR that, in response to notification by the Complainants that the Student suffers from environmental illness, it convened a Section 504 meeting on October 5, 2000. At that time, the District considered generic information the Complainants provided about the

illness, as well as information from the Student's physicians and the Complainants' narrative report, regarding the Student's health. The District determined that the Student was not eligible for special services, because "[t]he school staff does not presently observe [the Student's] health being impaired at this time." As a result of the meeting the District decided to track the Student's symptoms in school to further assess whether the school environment was adversely impacting his health and ability to learn.

OCR's investigation indicated that on October 26, 2000, the District held another 504 meeting to consider whether the Complainants had provided "...clearer documented evidence ... to support their claim that [the Student's] health was being impacted by environmental elements in his classroom." At the meeting the school nurse reported that she and the Student's teacher had seen little evidence of such impact. The District agreed to continue to track the Student's symptoms during the school day, to temporarily remove the rug from the Student's classroom, to permit the Complainants to install an air purifier in his classroom and to arrange for the Student to receive instruction in music, art and library education in alternative classrooms.

The District and the Complainants continued their dialogue regarding the Student's health throughout the remainder of the fall term. However, at neither of the October 504 meetings nor subsequently, did the District appear to have considered the Complainants' concern that the Student was exhibiting at home various adverse reactions to his school day experience. Given this fact, OCR was concerned that the District had not considered all relevant information regarding the potential impact of the Student's school on his health and ability to learn.

As noted above, the OCR investigation revealed that, during the fall of 2000, the District undertook several steps to discover whether the Student's school was adversely affecting his health or ability to learn. For a period of time it removed the rug from his classroom, but when District personnel came to believe that the rug was not affecting the Student it was restored. The District also granted permission to the Complainants to install an air purifier in the Student's classroom, which they did. The OCR investigation indicated that, at a 504 meeting on December 6, 2000, the District saw no evidence of an adverse impact by school environmental factors on the Student, that the Student's physicians had presented "no documented diagnosis", and that "[t]here is no longer a need to exclude [the Student] from any of his specials." At a Section 504 meeting on January 19, 2001, District personnel, including the Pupil Personnel Services Director, the Student's teacher, school nurse and Principal, concluded that no further accommodations were required for the Student, as "[t]he staff does not see any impact on his health at this point."

OCR learned that at the January 19, 2001, Section 504 meeting the District, not persuaded by the information presented by the Student's physicians, decided to involve an independent evaluator in a review of not only the Student, but also his school. A team from Yale Occupational and Environmental Medicine evaluated the Student in February 2001. The Yale physician confirmed the diagnosis of the Student's physician, that the Student "...suffers from environmental allergies." In March 2001, the team from Yale conducted an evaluation of the Student's school building, "... with respect to potential hazards that may be related to the illness...." The evaluation of the building offered a number of conclusions, among them that some rooms had an elevated level of carbon dioxide, and that the building's ventilation system, including that in the library, did not provide the recommended amount of fresh air.

At a June 4, 2001, meeting the Student's 504 team acknowledged a conclusion of the Yale evaluation, that the Student "...has significant environmental allergies that can cause symptoms when exposed." It further acknowledged the Yale conclusion that the Student's "[a]llergic symptoms may show ... affects on [the Student] within the school building." On this basis, the

team agreed that the Student is eligible for services under Section 504, and devised a 504 Plan for him, which included a number of actions the District would take to improve the IAQ of the rooms the Student frequents in his school. The District also adopted a recommendation by Yale that the school implement the Tools for Schools program created by the U.S. Environmental Protection Agency, and decided to introduce the program in additional District schools as well.

The OCR investigation indicated that the Complainants, on August 27, 2001, lacking confidence that the District would devise and implement an appropriate plan to accommodate the Student, withdrew him from the District. During the 2001-2002 school year, they instructed the Student at home.

The OCR investigation also indicated that the District's efforts to address the Student's alleged difficulties during the summer and fall of 2000, and the winter and early spring of 2001, focused on the Student. The District was clearly seeking evidence that the Student was clinically ill and that his illness manifested during school hours. Lacking this evidence, it was not until the spring of 2001 that the District procured a professional examination of the potential culpability of the Student's school as a source of his difficulties. For this reason, OCR is concerned that the District's initial evaluation of the Student did not consider all information relevant to the disability the Complainants asserted applied to him. Specifically, the OCR investigation indicated that the District focused almost exclusively on the Student, rather than on his school as well.

The second issue that OCR addressed was the amount of time it took the District to conduct a full evaluation of the Student. The Complainants first notified the District of the Student's disability as they prepared for his enrollment in the District. On March 14, 2000, they noted as a "significant health problem" on the District's School Nurse Emergency Form the Student's "Chemical sensitivities and allergies". In the Medical Alert section of the District's School Registration Form the Complainants added additional information about the Student's chemical sensitivities. The Complainants continued to provide the District with additional information about the Student's disability through personal health histories and notes from the Student's physicians through the summer and fall of 2000. They even recommended a specific video about the disability that might assist the District in understanding the nature of the problem in general, in hopes that the District might prove more receptive to their concerns. As noted above, however, the OCR investigation indicated that a professional evaluation of the Student and his school did not take place until February and March of 2001.

In summary, OCR's concerns involve the manner in which the District fulfilled its obligation under Section 104.35 of the regulations implementing Section 504, which require timely evaluation of a student's disability and placement based on consideration of a variety of appropriate data. While the Complainants first notified the District of the Student's physical impairments in March of 2000, the District did not complete a full evaluation of the Student and his school until a year later. OCR is concerned that the District did not adequately consider the Complainants' observations of symptoms the Student may have evidenced at home, and which may have been related to his daytime school environment. OCR is also concerned that the District did not undertake a timely evaluation of the Student's school building in its evaluation of the Student's disability.

District representatives and legal counsel have worked constructively with OCR to resolve the complaint. Prior to OCR rendering a formal finding with regard to the Complainants' allegations, the District submitted to OCR a Commitment to Resolve letter (CTR), in which it described specific actions it has taken and is willing to take to ensure that it provides the Student with a

free, appropriate, public education. The CTR, a copy of which is enclosed, describes actions the District will take to render the Student's school environmentally appropriate for him prior to his return, and steps it will take to maintain a safe environment for him and other students on a long term basis. The District, by its CTR, does not admit or acknowledge that it "...did not at all times offer an appropriate program to meet the Student's educational needs."

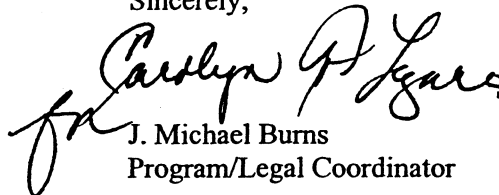
The CTR also includes provisions by which, upon his re-enrollment in the District, the District will assess the Student's academic status and provide services to compensate him for any academic loss that he incurred during the 2000-2001 or 2001-2002 school years, when he was not able to attend classes in his school. In addition, the CTR stipulates that the District is willing to reimburse the Complainants for expenses they incurred.

With the prior knowledge of the District, OCR forwarded to the Complainants copies of two draft versions of the CTR, requesting them to provide OCR with any questions or comments. In turn, OCR informed the District of a number of the questions and concerns identified to OCR by the Complainants. As a result, the District assured OCR that (1) the consultant is intended to assist the District not merely at the time of the Student's possible re-enrollment but also after his re enrollment if there are concerns about the IAQ of the school, and (2) if Yale is not available to provide its report on the IAQ of the school by June 30, 2002, the District's selection of the substitute consultant will be considered at a 504 meeting to which the Complainants will be invited.

For these reasons, OCR deems it appropriate to close the complaint investigation as of the date of this letter. As noted in the CTR, OCR will monitor the District's implementation of the terms of the CTR, and may reopen its investigation if the agreed-upon actions are not completed as scheduled.

We would like to thank you, your staff, and especially, attorney Linda Yoder, for the assistance provided OCR staff in the resolution of this complaint. If you have any questions regarding this letter please feel free to contact OCR Chief Attorney Thomas Mela at (617) 223-9679 or Mr. Carroll Brownlee, the investigator assigned to this complaint, at (617) 223-9659.

Sincerely,


J. Michael Burns
Program/Legal Coordinator

cc: Linda Yoder, Esq.

Enclosure

Linda L. Yoder
Phone: (860) 251-5717
Fax: (860) 251-5599
lyoder@goodwin.com

April 19, 2002

VIA FACSIMILE AND E-MAIL

Thomas Mela
Chief Attorney
Carroll Brownlee
Equal Opportunity Specialist
United States Department of Education
Region I Office for Civil Rights
John W. McCormack Post Office and Courthouse, Room 701
Post Office Square
Boston, MA 02109

Re: Complaint No. 01-02-1010

Dear Attorney Mela and Mr. Brownlee:

I am writing on behalf of the Superintendent of the South Windsor Public Schools with regard to Complaint No 01-02-1010. In that complaint, Mr. and Mrs. [REDACTED] raised concerns about the ability of the South Windsor Public Schools to provide a learning environment for their son [REDACTED] that did not exacerbate his allergies. Although South Windsor had identified [REDACTED] as a student with a disability who was entitled to special education and related services under section 504 and had developed an accommodation plan, the parents expressed concerns about both the scope of the accommodation plan and the evaluation process. Ultimately, the parents decided to home school [REDACTED] for the 2001-2002 school year as is their prerogative. The South Windsor Public Schools are committed to providing an appropriate educational opportunity to all students residing within the school District. The District feels that it can offer an appropriate program to [REDACTED] should his parents decide to reenroll him in the South Windsor Public Schools. The District is committed to working cooperatively with all of its parents and regrets that the [REDACTED] do not feel that the District responded in a timely and appropriate fashion to their concerns about how the school environment was affecting [REDACTED]. The District wants to make clear to the [REDACTED] and to the Office for Civil Rights the steps it has taken to have available an appropriate educational program for [REDACTED] and more generally the commitments it is making to

address issues relating to students with allergies and also how it will address concerns about indoor air quality issues. The District is committed to the following:

1. To ensure that the District has sufficient time to implement the accommodations agreed to herein, within fifteen days after the execution of this Agreement, the parents shall provide written notice to the Superintendent about whether they want to re-enroll [REDACTED] for the remainder of the school year. The parents shall notify the District by writing to the Superintendent on or before June 1, 2002 whether they intend to re-enroll [REDACTED] for the 2002-2003 school year. Failure to provide such notice shall not affect the student's right to re-enroll at any time.
2. The District shall retain Yale Occupational and Environmental Medicine Center (YOEMC) before the end of the current school year to serve as a consultant to monitor implementation of the accommodations for [REDACTED] and to provide advice regarding other air quality issues that may be identified with regard to [REDACTED]. The consultant shall evaluate the air quality in the room currently identified as the room that would be [REDACTED]'s primary classroom for the 2002-2003 school year as well as the art room and the music room for the second grade and the library at the Philip R. Smith Elementary School. This evaluation will include CO2 testing at the discretion of the evaluator. Information acquired from this evaluation shall be provided to the parents, the District and the Office for Civil Rights in a timely fashion and no later than June 30, 2002. If YOEMC is unavailable to serve in this capacity, the District will retain another consultant with expertise in air quality issues.
3. If the parents provide written notice to the Superintendent that [REDACTED] will be re-enrolled for the 2002-2003 school year, the District shall convene a 504 meeting as soon as the appropriate personnel and information are available and at least within the first two weeks of the 2002-2003 school year to review the accommodations plan with the parents, [REDACTED]'s teacher and the school nurse. The team also will address any concerns regarding potential sources of irritants at this meeting. The team will update [REDACTED]'s health plan with input from student's health care providers regarding how to deal with emergency reactions. This meeting may include other school staff members, the consultant and any consultants retained by the parents. The meeting will be held at a location that permits a consultant to participate by conference call if requested in advance by either party.

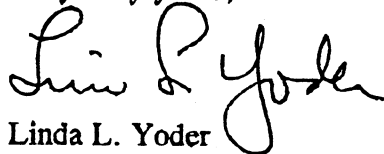
4. The District shall implement the following accommodations at the Philip R. Smith Elementary School for [REDACTED] if he re-enrolls for the remainder of the 2001-2002 school year or the 2002 -2003 school year.
 - a. Daily cleaning of the classrooms in which the student spends a significant period of time
 - b. Use of low-scent cleaning agents and school supplies
 - c. Annual notification to staff and students that some students are allergic to strongly scented personal care products and perfume and requesting that the students and staff voluntarily refrain from wearing such products in school
 - d. Daily wet mopping of the art room
 - e. Daily wiping of the gym mats with water to reduce dust
 - f. Providing an air purifier for the library
 - g. Use of an air purifier in [REDACTED]'s primary classroom
 - h. Currently, the rooms used for music instruction have a ventilation system that provides fresh outdoor air. The maintenance team will clean the filters, inspect the belts, and check to ensure that the ventilation units are functioning properly.
 - i. The District will add an air intake fan to provide fresh outdoor air to the art room.
 - j. The 504 team shall meet at least annually during the time period that [REDACTED] remains enrolled as a student in the South Windsor Public Schools to review the plan and make any needed modifications. The parents shall be invited to participate in these meetings. The school will contact the parents at least five days before scheduling the meeting date to provide them with notice and in an attempt to schedule a mutually convenient time for the meeting to be held.
 - k. In the event that [REDACTED] experiences adverse reactions in the library, music or art room, the District will offer [REDACTED] alternate instruction in the same curriculum in his regular classroom. This instruction shall be

provided by either a teacher or a paraprofessional under the supervision of a teacher.

1. If [REDACTED] is re-enrolled within the South Windsor Public Schools during the 2002-2003 school year, the District will conduct a curriculum based assessment designed to measure [REDACTED]'s knowledge of the school curriculum for his grade level no later than two weeks after he begins attending school. The §504 team will be convened no later than three weeks after [REDACTED] begins attending school to develop a plan to provide remedial services to [REDACTED] in any area where he shows a significant discrepancy from age appropriate peers.
5. The parents shall have 60 days after being served with a copy of this letter to review a settlement agreement and release and decide whether they wish to accept this settlement offer. If the parents return the executed agreement to the Superintendent within the 60 day time period, the South Windsor Public Schools will pay Mr. and Mrs. [REDACTED] the sum of \$5,000.00 within 15 days thereafter to reimburse them for expenses they incurred in providing evaluations and educational services to [REDACTED] up to and including the end of the 2001-2002 school year.
6. The District currently is implementing the Tools for Schools program in three of its schools, including the Philip R. Smith Elementary School and during the 2002-2003 school year will implement the program in the remaining four schools. This program involves working cooperatively with representatives of the State Department of Education and the State Department of Public Health who train staff in how to implement the program. After the training, the staff will conduct surveys to identify indoor air quality concerns within each school and will prioritize the results and develop a response plan. The District also will monitor potential sources of irritants at each of its schools on an ongoing basis. Further, in the event that a parent or student makes a written complaint to the school principal about specific indoor air quality issues at a specific school location, the District shall commence an investigation of the complaint within 5 school days.
7. The District commits to the following legal requirements and agrees to provide in-service training to its special services staff during the 2002-2003 school year that will address when and how to respond to 504 issues involving indoor air quality concerns. This training shall include a discussion of the following legal requirements:
 - a. The 504 team will consider reports of symptoms occurring outside of the school setting when evaluating a claim that a student is having an adverse reaction to the school setting.

- b. The 504 team shall consider information from the student's parents that will include their observations of the student and any materials provided by the parent including any evaluations provided by the parent. Consideration of an evaluation by the 504 team does not require the team to reimburse the parents for the cost of the evaluation or to accept the recommendations in the evaluation but only to consider this information as part of the evaluation process.
 - c. When a parent requests that the District address a concern about indoor air quality issues having an adverse impact on a student, the District shall complete an evaluation of the student and the identified portion of the school building and, if appropriate, design and implement a 504 plan within a reasonable period of time. In this regard, the District shall use the State timeline regarding implementation of an IEP (R.C.S.A. 10-76d-13 (a) (1)-(2) (45 school days, exclusive of the time required to obtain parental consent) as a guideline for determining what constitutes a reasonable period of time. In making this evaluation, the §504 team may rely on information provided by the student's treating physician. In the event that the §504 team decides that this information is not sufficient for the evaluation, the District shall select an evaluator with expertise in the area to be evaluated to conduct an evaluation of the student at no cost to the parents.
8. The District is committed to the programs outlined above and to this end agrees to provide reports to the Office for Civil Rights regarding implementation of these items on or before October 30, 2002 and April 30, 2003 and additionally upon request.

Very truly yours,


Linda L. Yoder

LLY/rmr

cc: Dr. Joseph Wood, Superintendent of Schools



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
REGION I
JOHN W. McCORMACK POST OFFICE AND COURTHOUSE, ROOM 701
POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109-4557

April 29, 2002

Dr. Gregory J. Riccio
Superintendent
Torrington Public Schools
355 Migeon Avenue
Torrington, Connecticut 06790-4822

Re: Complaint No. 01-02-1019

Dear Superintendent Riccio:

This letter is to inform you that the Office for Civil Rights (OCR) has completed the investigative phase of this complaint. Based on the information gathered, OCR has determined that there is insufficient evidence to support some of the Complainant's allegations that the Torrington Public Schools (District) discriminated against her daughter on the basis of her disability. However, the District has voluntarily agreed to take actions regarding other allegations where OCR identified concerns. Therefore, OCR is closing the investigative phase of this complaint as of the date of this letter.

OCR identified particular concerns regarding the District's efforts to provide students with disabilities attending the Torrington Middle School (School), or who are on homebound instruction, including the Student, with an equal opportunity to participate in the District's programs. With regard to the Complainant's allegation concerning the physical environment at the School, OCR is concerned that conditions at the School may affect the ability of students with disabilities to participate in the District's programs. Additionally, OCR identified concerns with respect to the District's provision of services to students with disabilities who are on homebound instruction.

We informed you in a letter of November 30, 2001, that we had received this complaint, which was filed by a parent (Complainant) on behalf of her daughter (Student), a seventh grader who has been diagnosed with [REDACTED], asthma and allergies, is being home tutored by the District.

Specifically, the Complainant alleged that the District failed to maintain the Torrington Middle School in a safe and usable condition, thereby denying her daughter the benefits of the District's programs and activities and excluded her daughter from participation in Exploratory subjects by not offering them through home tutoring. Additionally, the Complainant alleged that the District delayed providing instructional materials for home tutoring and failed to provide her daughter a Free Appropriate Public Education (FAPE) by not implementing certain portions of her Section

504 Plan. Further, the Complainant alleged that the District failed to notify her of a student awards ceremony in which her daughter was to be recognized for her writing skills and did not document a visit by the Student to the nurse's office or notify the Complainant of the visit. The Complainant also alleged that the District did not inform her of the identity of the District's Section 504 Coordinator. Lastly, the Complainant alleged that the District harassed her and her daughter by reporting her to the state Department of Children and Family Services (DCF) for educational neglect.

OCR accepted the complaint because these allegations are within our enforcement jurisdiction. OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA) and their implementing regulations, which prohibit discrimination on the basis of disability. The District is subject to the Section 504 regulations because it receives Federal financial assistance from the U.S. Department of Education. The District is also subject to the ADA regulation because it is a public entity operating an elementary and secondary education system.

During our investigation, we reviewed information and records provided by the District and the Complainant, and spoke by phone with the Complainant and Dr. Donald Naiman, the District's Director of Student Services, and Domenic Mainella, the District's Director of Facilities. Additionally, we have talked with James Rokos, Executive Director of the Torrington Area Health District (TAHD). TAHD conducted an inspection of the roof leakage problems at the Middle School in March 2001. We also talked with two of the Student's physicians, a pediatrician and an allergist, and the parents of two other Middle School students who report that their children have experienced health problems related to the School's physical conditions. OCR's conclusions are set forth below.

Failure to maintain the Middle School in a safe and usable condition

The Complainant alleged that the roof leakage problems and indoor air quality (IAQ) of the School present an environment that exacerbates the Student's health problems. The Student was diagnosed with [REDACTED] in March 2000, when she was in fifth grade. She also has asthma and allergies.

The Director of Facilities informed OCR that roof leakage problems have existed from the time the School was built about seven years ago. When leakages occur, wet carpeting is wet-vacuumed and shampooed and some ceiling tiles are replaced. However, these are ongoing, recurring problems in wet, rainy weather. Various repairs have been tried, which have not corrected the problems. Further repairs are to be made during this summer.

As a result of a complaint from the Complainant to TAHD in March 2001, concerning water leaks and stained ceiling tiles and carpeting, TAHD conducted an inspection of the School on March 30, 2001. TAHD conducted its inspection in the areas of the School where leaks occurred and did not focus on those areas that were frequented by the Student when she attended school.

The inspection occurred on a rainy day. The TAHD's report reflects the inspector's observation of problems in a number of locations, particularly on the first and third floors, including "actual water leaks," some with no indication of an attempt to contain them, and signs of previous leaks, as evidenced by water staining and sagging ceiling tiles. (The sixth grade classrooms are primarily on the third floor, the seventh grade on the second floor, and the eighth grade on the first floor.)

TAHD informed OCR that they discussed their findings and possible repairs with the School's builders in April 2001. TAHD further informed OCR, and the District confirmed, that the builders undertook minor modifications to the roof in the Fall 2001. However, according to TAHD, these repairs did not resolve the leakage problems.

At the District's request, Northeast Laboratories conducted a follow-up IAQ evaluation on October 17, 2001. This evaluation, which also focused on the areas in which water problems had occurred, assessed carbon dioxide levels, humidity and temperature, air-borne molds and bacteria, and surface molds and bacteria. The report findings identified problem areas of the building with elevated air-borne and surface bacteria levels. The report also notes that there were many stained ceiling tiles throughout the building. The Lab's recommendations include "continuing to control the roof leaks via the plan that is in progress," replacement of stained ceiling tiles, frequent "HEPA" vacuuming of floors and shampooing of carpets with a sanitizer, as well as specific recommendations regarding a first floor room that is without windows and ventilation.

The Student began attending the Middle School in sixth grade, in the 2000-01 school year. However, she was absent a total of 37 days in the first and second marking periods due to illness, and was absent from mid-January through the remainder of the school year. The Complainant contends that the physical condition of the building exacerbates the Student's [REDACTED], asthma and allergies, and that, therefore, the building is unsafe and unusable for her. The Complainant had provided information to the District regarding the Student's medical diagnosis and health issues, but refused to allow the District's Medical Advisor to confer with the Student's physicians.

The Complainant provided medical information to the District in the form of responses on the District's Supplemental Medical Questionnaires. Most of the Questionnaires were prepared by the Complainant in consultation with the Student's pediatrician and signed by him. The District contended that this form of medical documentation was irregular.

These Questionnaires state a medical diagnosis of [REDACTED] that the Student's allergies and asthma symptoms exacerbate her [REDACTED] and that she has multiple chemical sensitivities (MCS). An August 2001 Questionnaire was prepared and signed by the Student's allergist and states a medical diagnosis of allergies, asthma and [REDACTED], noting symptoms of breathing difficulties.

Although the District considered the medical documentation provided by the Complainant regarding the Student's disabilities to be insufficient, and despite the Complainant's ongoing

refusal to allow the District's Medical Advisor to contact the Student's pediatrician, the District developed Section 504 Plans for the Student while she was attending the Middle School and for her homebound instruction. The Student's Section 504 Plan of August 31, 2000, for the Student's entry into sixth grade at the Middle School, states that tutoring would be available to her for extended absences. When, after a number of absences, the Student did not return to school in January 2001, the District offered home tutoring in the core academic subjects, which has continued through the current school year.

As we informed Dr. Naiman, the parents of two other District seventh graders have recently contacted OCR. One parent informed us that her son has as his pediatrician the District's Medical Advisor, who, according to the parent, has concluded that her son has asthma that was induced by his attendance at the Middle School. The other parent informed us that her son has experienced breathing problems on a number of occasions while attending the Middle School. Although neither parent has as yet filed a complaint with OCR, with their permission we have shared their and their sons' identities with the District.

Based on the information obtained during our investigation, OCR is concerned that the environmental conditions in the School building may adversely affect the ability of students with disabilities to participate in the District's educational program. In a conversation with OCR, you acknowledged the physical problems of the building and discussed remedial actions. The enclosed agreement sets forth the actions the District will take to address the roof leaks and the environmental problems stemming from them, as well as address the needs of students with disabilities who are affected by the School's conditions. These actions include that, if corrective actions do not, by the start of the 2002-03 school year, meet the environmental health needs of students with disabilities, including the Student, Section 504 team meetings will be convened to consider alternative settings for these students. We have discussed with Dr. Naiman, that, in selecting an alternative setting, the District needs to ensure that the setting will meet the student's environmental health needs. In addition, you provided assurance to OCR that, before the start of the 2002-03 school year, the roof leaks at the School will be repaired and the integrity of the roof will be guaranteed, or a plan to guarantee its integrity will be initiated by the District no later than the first week in June, 2002. Further, the District should ensure that, if the Student is placed in an alternative setting, that setting will be made aware of the possible irregularity of her attendance because of her [REDACTED]. Therefore, OCR considers this allegation to be resolved.

Denial of participation in Exploratory subjects through home tutoring

The Complainant alleged that by not offering the Student home tutoring in the Exploratory subjects (art, music, technology education, family and consumer science and computer keyboarding), in addition to core academic subjects, the Student was denied participation in the District's full programs.

The District's Guidelines for Homebound/Hospital Instruction state that homebound instruction will be provided when a Planning and Placement Team determines that a student has a disability that is so severe as to prevent the student from learning in a school setting. However, the policy

does not state what subjects will be offered to the student. A student placed on homebound instruction for medical reasons must have a written statement from his or her physician, which will be reviewed by the District's Medical Advisor.

The District reported to OCR that students on homebound instruction are offered instruction only in the core curriculum. The Exploratory subjects are not offered. The Section 504 regulation requires educational decisions for students with disabilities to be made on an individual basis by persons who are knowledgeable about the student. A policy that prohibits teams from considering certain aspects of a student's educational program, such as offering Exploratory subjects through a homebound tutoring program, would be a violation of Section 504.

The District has agreed to ensure that its policy for offering instruction to homebound students will provide that Section 504 teams will consider offering instruction in Exploratory subjects, as well as instruction in the core curriculum. If the team determines that Exploratory subjects will be offered, they must be offered so that the tutoring currently offered in the core academic subjects is not reduced. The District has also agreed to convene a Section 504 team meeting to consider whether Exploratory subjects will be offered to the Student through home tutoring. OCR, therefore, considers this allegation to be resolved.

Delayed provision of Calvert Home School instructional materials

The Complainant alleged that the District did not provide the Calvert Home School materials for use in home tutoring until November 2001.

According to the team meeting notes for the Student's August 22, 2001 Section 504 plan, although the team did not agree on an appropriate program for her, "she will receive homebound instruction as she did last year in grade six for ten hours a week." The Student's Section 504 Plan of September 6, 2001, states that the Calvert Home School program will be provided to the Student "along with the TMS curriculum." The District reported to OCR that it initiated the ordering process for the Calvert materials on September 17, but there were internal delays and the ordering was not completed until October 16. The District received the materials on November 1 and the Complainant was notified. The District has agreed to implement a process for ensuring that instructional materials for a student's homebound instruction, if different from the regular curriculum, such as the Calvert Home School program, will be ordered and provided for the student's use in a timely manner. Given the delay in providing the Calvert materials to the Student at the beginning of the year, OCR suggests that, as compensation, her team consider offering home tutoring during the summer of 2002. OCR considers this allegation to be resolved.

Failure to provide FAPE by not implementing the Student's Section 504 Plan

The Complainant alleged that the District failed to implement the Student's Section 504 Plan by placing her on a pass-fail grading system, thereby denying her eligibility for the honor roll; failed to ensure that School staff were aware that the Student's Section 504

Plan permitted her to use the school elevator; and failed to provide the Student with an accommodation to assist her concentration.

The Complainant contends that the Student's teachers would not allow her to receive numerical grades and that the District's position was that she should not be eligible for the honor roll as she was not meeting the requirements for honors eligibility. OCR reviewed the District's policy regarding eligibility for the honor roll, contained in its Student Handbook. The policy states the minimum numerical grade a student must achieve in all subjects to be eligible for honors or high honors. Additionally, it states that no incomplete grade may be recorded, nor any failing grade. The policy does not address the issue of honor roll eligibility for students who are graded on a pass-fail basis.

OCR also reviewed the Student's Section 504 Plans provided by the District, dated August 31, 2000 and March 22, June 18, August 22, and September 6, 2001. They contain statements indicating that if the Student cannot complete assignments due to her health, her grade will not be penalized, there will be no penalty for incomplete homework, and grades will be on a pass/fail basis "where applicable." The June 18, 2001 Plan notes that the Student has passed science, math, social studies and language arts for the year (sixth grade) and is promoted to seventh grade. The Plan of September 6, 2001 states "honor roll eligibility will be based on grades in Calvert [Home School program] for work done." The intent of this statement is ambiguous. It is not clear whether the Student will receive numerical or pass-fail grades for the work she completes, but appears to be saying that her honor roll eligibility will not be affected by work that is not completed.

However, OCR has concluded that, although a student with a disability may be unable, because of his or her disability, to complete the academic requirements for honor roll eligibility, the District is not obligated under Section 504 to modify its honor roll criteria for such a student. If a student on homebound instruction is being offered tutoring in the subjects by which honor roll eligibility is determined, the District is not obligated to allow such students to be considered eligible based on an amount or level of work that is less than that required of students who do not have a disability.

With regard to the Student's use of the School elevator, the District also has agreed to ensure that, upon request by the Complainant, her team will consider who among building staff will be made aware that she has been provided with an elevator key as an accommodation for her disability. OCR considers this allegation to be resolved.

Additionally, the Complainant contends that in a Reading and Study Skills class, the teacher declined to close the classroom door to block hallway noise, which the Student requested to assist her concentration. The District has agreed that, upon request by the Complainant, the Student's team will consider whether her Section 504 plan should include an accommodation for distractibility. OCR considers this allegation to be resolved.

Omission of notification of Complainant of school-sponsored events and of a visit by the Student to the nurse's office, as well as not informing the Student she had won a writing award

The Complainant alleged that the District failed to notify her, while her daughter was not attending school, of a writing award she was to receive and of the February 2001 awards ceremony, thereby denying the Student participation in the event. The mother contended that the Student learned of the award from a friend after the ceremony.

The District acknowledged that they had not informed the Complainant or her daughter of the award or the awards ceremony. The District informed OCR that the teacher had sent home with her students a parent invitation to the event. However, the Student was not attending school at this time and the Complainant did not receive the invitation. The District reported to OCR that the Middle School principal issued a notice to all staff that such notices must be provided to homebound students as well. Additionally, the District informed OCR that the award certificate was subsequently mailed to the Student.

The mother contended, however, that, since then, she was not informed of an art show sponsored by the School. The District has agreed to take steps to ensure that parents of students on homebound instruction will be informed in a timely manner of extracurricular activities, field trips and other events in order that the students may choose whether to participate in them. OCR, therefore, considers this allegation to be resolved.

The Complainant also alleged that an incident occurred in sixth grade whereby the Student accidentally fell on the sidewalk outside the School. She was bleeding and a teacher who was nearby sent the Student to the nurse's office. The Complainant contends that the nurse did not document the visit nor did the School notify her of this incident. The District has agreed that the Student's team will consider the circumstances under which the Complainant will be notified of her daughter's visits to the school nurse for illness or injury, and how and when the Complainant will be notified. OCR considers this allegation to be resolved.

Omission of notification to Complainant of identity of District's Section 504 Coordinator

The Complainant contends that at the team meeting for her daughter on September 6, 2001, the District's information for parents still showed as its Section 504 Coordinator a person who was no longer employed by the district.

The District agreed to ensure that all District administrative and school staffs and parents are informed in a timely manner of the identity of the District's current Section 504 Coordinator(s), and of future Coordinator(s), by name(s) and title(s), and of the role(s) of the Coordinator(s). OCR considers this allegation to be resolved.

The Complainant also informed OCR that early in the current school year, Dr. Naiman told her that he would be the District's Section 504 Impartial Hearing Officer. At that time, Dr. Naiman had just been appointed as the District's Director of Student Services and was new to the District.

and the state. We have confirmed with Dr. Naiman his subsequent understanding that, under the state's policy regarding Section 504 due process hearings, a school district employee may not serve as its Impartial Hearing Officer.

Report of Student to DCF for educational neglect constituted harassment

The Complainant alleged that the District intimidated and harassed her and her daughter, based on the Student's disability, by reporting her for educational neglect on two occasions because of the Student's ongoing absences from school. The Complainant informed OCR, and the District confirmed, that both the Juvenile Court and DCF determined that the charges were unfounded.

We had informed the Complainant that her allegation regarding the report to Juvenile Court in April 2000 was untimely under OCR guidelines for the timely filing of a complaint. Although only allegations regarding the FAPE issues in the 2000-01 school year are timely, and the report to DCF, which occurred on May 7, 2001, is not a FAPE issue, OCR reviewed it. We reviewed the Juvenile Court report as background information.

The Complainant contends that the District was fully aware of the Student's disabilities when the reports were made to the Court and DCF and that these disabilities, as well as her illnesses, prevented her from attending school regularly. Further, that the physical conditions of the Middle School exacerbated her health problems. The Complainant contends, therefore, that the reports of educational neglect were unwarranted.

OCR reviewed the District's Abuse/Neglect Policy, which, in accordance with state law, designates school employees such as principals, teachers and guidance counselors as mandated reporters of actual or suspected abuse or neglect of students. We also reviewed information provided by the District concerning the numbers of students referred to DCF during the past two school years, which included both regular education students and students with disabilities, as well as students on homebound instruction. Of the 75 students referred to DCF during this time period, 30 were students with disabilities, two of whom were on homebound instruction. The majority of the 75 students, 52, were referred for educational neglect.

The District informed OCR that the Middle School counselor, after consulting with the school principal, in accordance with the District's policy, made the report of educational neglect to DCF. The decision was based on the Student's history of non-attendance at school, the limited number of hours of home tutoring offered by the District in which the Student was able to engage because of illness or fatigue, the District's conclusion that the medical documentation of the Student's disabilities, provided to the District by the Complainant, was insufficient for the District's Medical Advisor to determine the nature and severity of the Student's disabilities, and the Complainant's ongoing refusal to allow the District's Medical Advisor to contact the Student's pediatrician.

Given these circumstances and the District's information that the majority of the referrals it has made to DCF for educational neglect involve regular education students, rather than students with disabilities, OCR has concluded that there is insufficient evidence to conclude that the District, in reporting the Student to DCF, harassed the Complainant or the Student on the basis of disability. OCR cannot conclude, therefore, that this report constitutes harassment. The District stated to OCR that, in retrospect, it believes that, rather than report the Student to DCF, it should have made greater efforts to obtain sufficient documentation of her disability.

Conclusion

OCR considers the actions to be taken by the District, as stated in the enclosed agreement, as sufficient to address our concerns, and, therefore, will close the investigative phase of this complaint as of the date of this letter. We will monitor the District's implementation of these actions, in accordance with the agreement.

Finally, please be aware that under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

We thank you and your staff for your cooperation and assistance in this matter. If you have any questions, please contact me at (617) 223-9683 or Nancy Taylor at 223-9690 or you may e-mail us at carolyn.lazaris@ed.gov and nancy.taylor@ed.gov.

Sincerely,

A handwritten signature in black ink, reading "Carolyn F. Lazaris". The signature is fluid and cursive, with the first name "Carolyn" being more prominent than the last name "Lazaris".

Carolyn F. Lazaris
Program/Administrative Manager

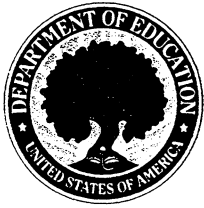
Enclosure

cc: Dr. Donald Naiman

Resolution Agreement

Torrington Public Schools - Complaint No. 01-02-1019

- I. With regard to physical conditions at the Torrington Middle School, resulting from ongoing roof leaks, the District agrees to take the following actions:
 - A) The District ensures that, during the time that the roof leaks of the Middle School are being corrected, the repairs will not jeopardize the health or safety of any occupants of the building.
 - B) The District ensures that, during the current school year, a qualified industrial hygienist will inspect the Middle School, including its carpets, to determine whether, because of current or potential environmental health needs of building occupants, corrective actions, including removal of carpets, will be necessary.
 - C) The District ensures that, before the start of the 2002-2003 school year, the necessary corrective actions recommended by the industrial hygienist will be initiated.
 - D) The District ensures that, after the necessary corrective actions recommended by the industrial hygienist have been implemented, the hygienist will conduct a re-inspection to determine whether the corrective actions are adequate to meet the current or potential environmental health needs of building occupants.
 - E) The District ensures that, on the possibility that at the start of the 2002-2003 school year the necessary corrective actions do not meet the environmental health needs of students with disabilities, Section 504 teams will meet to consider whether educational services in alternative settings, including schools outside the District, are necessary.
 - F) The District ensures that, at the start of the 2002-2003 school year, each of its schools will commence implementation of the Tools for Schools program.
- II. With regard to Middle School students who, because of a disability, including the Student who is the subject of this complaint, are being provided home tutoring:
 - A) The student's team, as part of their deliberations regarding the subject(s) that will be offered to the student through home tutoring, will consider offering the Exploratory subjects, as well as core academic subjects.
 - B) The District will implement a process for ensuring that instructional materials for homebound instruction, if different from the regular curriculum materials, such as the Calvert Home School program, will be ordered and provided for the student's use in a timely manner.
 - C) The District will ensure that students and their parents are informed in a timely manner of school events, such as awards ceremonies, field trips and extracurricular activities, in order that they will have the opportunity to attend or participate.
- III. The District will notify all staff and parents of the identity and the roles of the District's current Section 504 Coordinators, designated by the Superintendent in December 2001 (Dr. Donald Naiman, Director of Special Services, for student matters, and Dr. Lambour, for staff issues), as well as the identity of any subsequent Coordinator(s).



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
REGION I
JOHN W. McCORMACK POST OFFICE AND COURTHOUSE, ROOM 701
POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109-4557

AUG 27 2003

Mr. Richard Scherza, Superintendent
North Smithfield Public Schools
450 Greenville Road
North Smithfield, Rhode Island 02896

Re: Complaint No. 01-03-1068
Student: [REDACTED]

Dear Superintendent Scherza:

As you know, on February 28, 2003, the Office for Civil Rights (OCR) received a complaint from Ms. Leslie Nelligan (Complainant) against the North Smithfield Public Schools (District), alleging discrimination against the Student on the basis of disability. The issues that OCR accepted for investigation were whether the District: 1) failed to provide the Student with a free appropriate public education (FAPE) by failing to timely evaluate him, as required by Section 504 (34 C.F.R. Sections 104.33 and 104.35), and 2) failed to accommodate the Student's disability by failing to provide a safe and healthy environment in which he could participate and learn at North Smithfield Elementary School (NSES) (34 C.F.R. Sections 104.21 and 104.33).

OCR accepted this complaint for resolution because the allegations fall under the jurisdiction of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II). The District is subject to the requirements of Section 504 because it receives Federal financial assistance from the U.S. Department of Education, and it is subject to the requirements of Title II because it is a public entity that operates an elementary and secondary education program.

During this investigation, OCR identified compliance concerns related to the first issue, above. Specifically, OCR found that the District failed to follow correct procedures under Section 504. While it was not one of the issues originally under investigation, OCR also found during the course of this investigation that the District failed to provide the Complainant with procedural safeguards as required by Section 504 (issue #3). OCR also found during the course of this investigation that certain District administrators were unaware of the identity of the District's designated Section 504 Coordinator, and lacking in general knowledge of the District's Section 504 procedures (issue #4).

OCR staff discussed these concerns with you during an August 4, 2003, on-site visit and an August 8, 2003, conference call, and on August 27, 2003 you signed, on behalf of the District, a resolution agreement (Agreement), designed to remedy OCR's compliance concerns. Regarding the second issue, OCR determined that because the Student had not

Page 2 – Resolution Agreement, Complaint No. 01-02-1019

IV. With regard to the Student who is the subject of this complaint, the District agrees to take the following actions:

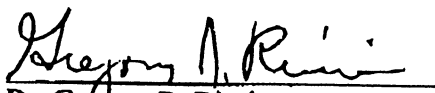
- A) Upon request by the Student's parent, her team will consider whether her Section 504 plan should include an accommodation for distractibility because of background noise for the periods of time when the Student attends school.
- B) Upon request by the Student's parent, her team will consider who among building staff will be made aware that she has been provided with a key for elevator use as an accommodation for her disability.
- C) Upon request by the Student's parent, her team will consider the circumstances under which her parent will be notified of her visits to the school nurse for illness or injury, and how and when the parent will be notified.

V. As compensation for the Student's team not having considered home tutoring in Exploratory subjects during the current school year, the District agrees to reimburse the parent for the cost of private art and music lessons (Exploratory subjects) during this year. The parent paid for a total of 20 one-hour art and music lessons, at \$20 per hour, for a total of \$400.00.

VI. OCR will monitor the District's actions to implement this agreement. The District agrees to provide the following written reports to OCR:

- A) Regarding Part I above, the District's plan for ensuring that these actions are implemented, by June 15, 2002, and a status report by September 1, 2002
- B) Regarding Parts II, III and V above, a status report by June 1, 2002
- C) Regarding Part IV, a status report by October 1, 2002

This Agreement is entered into freely by the Torrington Public Schools. It does not constitute an admission of liability or wrongdoing in any way, but rather represents a good faith effort to address concerns identified by OCR during the course of this complaint investigation.


Dr. Gregory R. Riccio
Superintendent of Schools

4/26/02
Date

yet been determined eligible for services under Section 504 at the time of the investigation, it would be premature, and therefore, inappropriate to make a determination with regard to this issue in the context of this complaint.

Based on the information submitted in the District's responses to OCR's data requests, a review of the Student's education team meeting summaries, on-site interviews, and information received from the Complainant and other concerned parents, OCR's determinations are as follows.

Background

NSES underwent an extensive renovation project during the past few years. In addition to the renovation project, the District initiated indoor air quality (IAQ) testing during the winter of 2000 in response to concerns over mold discovered in certain classrooms. OCR found that the history of IAQ testing at NSES and resultant correspondence between the District and the company conducting the testing during this period was lengthy and complex. OCR also found through interviews with District staff, administrators, the Complainant and concerned parents that from 2001 through the present time, the District has received a number of IAQ-related complaints, both verbal and written, from numerous NSES parents and teachers.

In addition, OCR found that during the past three years, at least three teachers who had expressed concerns to administrators about IAQ health-related issues had transferred out of NSES. Further, during this same period, at least three students withdrew from NSES due to IAQ health-related concerns. OCR found that in spite of various ongoing remedial actions being taken to ameliorate IAQ at NSES which continue to date, parents and teachers expressed ongoing concerns about the District's reluctance to continue mold testing after 2001 (the District has continued to test CO2 levels on a regular basis) and concerns that certain classrooms continue to experience elevated levels of CO2 that remain unexplained.

It is important to note that at the time of this writing, according to media reports, new mold was recently discovered at NSES and a very extensive mold problem was also recently discovered at the District's Halliwell Elementary School. OCR learned that the District is currently undertaking an extensive clean-up effort at both of these schools.

In order to gain a better understanding of events as they unfolded from 2000 to the present, OCR reconstructed the chronology of activities as follows:

In February 2000, the District hired AAC Environmental Services, Inc. to conduct a limited IAQ building survey.

In September 2000, the Student enrolled in kindergarten in Room 6, Wing B (old wing) of NSES. According to the Complainant, by late October, for the first time in his life, he experienced headaches in school almost every day.

In November 2000, the Complainant took the Student to an Ear, Nose and Throat (ENT) physician who suggested that she keep the Student out of school for two weeks. According to the Complainant, the Student did not experience headaches during his two weeks away from school. Also, according to the Complainant, when the Student returned to NSES after two weeks, the Complainant gave the school nurse a letter from the ENT physician.

In January 2001, the District employed OccuHealth to initiate IAQ testing at NSES. Carpet dust was tested and elevated levels of viable fungi were found. OccuHealth recommended removal of all carpeting.

On February 2 and 14, 2001, NSES classrooms underwent mold testing. Among others, room 6, the classroom to which the Student was assigned, had high levels of mold spore concentration.

On February 21, 2001, CO2 testing was conducted at NSES. The carbon dioxide levels exceeded 1000 parts per million (ppm) in 10 of the 22 classrooms. It was recommended that NSES undertake mechanical modifications to the Univents in these classrooms, including room 6. (For reasons stated below, OCR notes, per this study, that rooms 3 and 7 were also problematic, and that room 18 was not).

In February 2001, there was a school-wide clean-up based on OccuHealth's recommendations. According to the Complainant, after the clean-up was completed, the Student did not experience any problems for the remainder of his kindergarten year.

On May 29 and August 31, 2001, mold testing was completed at NSES, with airborne mold spore concentrations found to be in the acceptable range.

In September 2001, the Student entered first grade at NSES. He was assigned to Room 18, Wing C (new wing). While the new wing was under construction, his class temporarily moved to a different building. His class moved into Room 18 upon completion of the Wing C construction in December. According to the Complainant, he did not experience any headaches during first grade.

In September 2002, the Student entered second grade at NSES. He was assigned to Room 3, Wing B. His first day of school was September 4th and, according to the Complainant, he began complaining of headaches by September 5th.

On October 1, 2002, the Complainant met with the Principal and Assistant Principal to discuss her concerns about the Student's headaches. According to the Complainant, their response to her concerns were "sorry, we can't help you; there's nothing wrong with the building."

On October 2, 2002, the Complainant wrote a letter to the school nurse informing her that she had begun to document the Student's headaches each day when he returned home

from school. The Complainant informed the nurse that the Student complained of headaches on September 5, 9, 12, 23, 25, 26, and 27, and October 1 and 2, 2002.

On October 7, 2002, according to the Complainant, the Student's pediatrician, Dr. Smith, contacted the school nurse requesting that the nurse document each time the Student came to her office with a headache.

On October 8, 2002, according to the school nurse, she spoke with Dr. Smith regarding the Student's headaches and the administration of Tylenol. The nurse's notes from the conversation reflect that Dr. Smith inquired during this conversation about the possibility of a Section 504 plan for the Student and that the nurse responded that she did not feel that a Section 504 plan was appropriate. The Complainant was not provided with procedural safeguards as a result of this conversation.

During October 2002, the nurse documented administration of Tylenol to the Student for headaches.

On October 16, 2002, the Complainant met with the Principal to ask her for help regarding the Student's headaches. At that time, the Principal indicated that there was nothing she could do. The Complainant was not provided with procedural safeguards during this meeting. During the month of October, according to both the Principal and the Complainant, the Complainant requested verbally, on more than one occasion, that the District develop a Section 504 plan for the Student in order to relocate him to the new Wing C.

On October 18, 2002, the NSES facilities director wrote to the Complainant to inform her that he had performed CO2 testing in the Student's classroom, per her request, for approximately one week and that the levels in the room were well below the standards of 1000 ppm.

On October 29, 2002, the Complainant picked up the Student early from school because the school nurse had called to report that the Student was complaining of a sore throat. While she was at school, the Complainant again spoke with the Principal asking her for help regarding the Student's headaches. The Principal again stated that there was nothing she could do. The Complainant was not provided with procedural safeguards at this time.

On November 4, 2002, the Complainant requested in writing, via certified mail to the Principal and Superintendent, that the District consider the Student for 504 eligibility due to the headaches he was experiencing in the classroom. File documents confirm that the District received this letter on November 5, 2002. Her request was not forwarded by the Principal, who is the Section 504 building coordinator, nor by the Superintendent, who is the District's Section 504 grievance coordinator, to the Special Education Administrator, who is also the District's Section 504 Coordinator.

On November 8, 2002, the District received an undated letter from Dr. Smith, in which she asked the Principal if the District could possibly move the Student to the new wing.

Specifically, she wrote: "I am writing to you to ask if there is anything that can be done to allow [the Student] to be in the new section...I believe that [the Student] is a special case and that something in the school is triggering his headaches."

Also on November 8, 2002, a pediatric neurologist evaluated the Student and diagnosed him with migraine induced by sinusitis. In the evaluation, the doctor alluded to a possible school environment allergen. The Principal acknowledged to OCR that she received a copy of this evaluation.

On November 14, 2002, the Student had a CAT scan completed on his sinuses; a sinus problem was detected and the Student began taking antibiotics. According to the Complainant, she provided this information to the District.

Also on November 14, 2002, the Complainant met with you seeking guidance on how to help the Student. The Complainant asked if the Student could move to Wing C, where he had been symptom-free the prior year. You declined because there was no second grade classroom in Wing C. However, you did offer to move the Student to a second grade class in Room 7, Wing A (old wing). The Complainant asserted that while she had reservations about a move to Wing A due to ongoing high concentrations of CO₂ in certain classrooms, she was willing to experiment to see if it would help the Student's health. The Complainant was not provided with procedural safeguards at this meeting.

In mid-November, you and the Principal asked the Complainant to sign a release form to allow Dr. Lutton (the District's Occupational Health Consultant) and Dr. Smith to communicate with each other. According to the Complainant, she signed the releases, however, the two doctors never spoke with each other; Dr. Smith called Dr. Lutton, but did not speak to him and did not receive a return phone call.

In mid-November, the District attempted to accommodate the Student by relocating him to Room 7 in Wing A.

On November 19, 2002, the Complainant wrote to you, thanking you for moving the Student to a different wing. She requested that the District again conduct IAQ testing at NSES.

On November 27, 2002, the Complainant withdrew the Student from school, due to her concerns that the Student continued to experience headaches after three days in Room 7.

On December 2, 2002, the Complainant informed the District, via letter, that she had decided to home school both the Student and his sister. In her letter, she stated that she and her husband "ask the school department to allow this arrangement to continue until Dr. Lutton and...Dr. Smith, confer in regards to the health issues that involve our children."

On December 4, 2002, the Complainant began home-schooling both her children.

On December 18, 2002, the Complainant was sent notice by the District that its school board had approved her to home school her children.

On January 29, 2003, the Complainant requested a team meeting via a telephone conversation with the Special Education Administrator to consider Section 504 and IDEA eligibility.

On February 3, 2003, the Special Education Administrator wrote to the Complainant, asking that she complete forms that would be forwarded to the Teacher Support Team, and a referral review would be scheduled that would cover both IDEA and Section 504 eligibility. The Administrator acknowledged to OCR that his letter to the Complainant specifically referenced Section 504 because of her request for a Section 504 evaluation.

On February 4, 2003, the Complainant completed the requested forms, which stated that the reason for referral was that the Student's headaches had occurred almost daily. The Complainant requested that the Student be assigned to Wing C or to another building.

On February 26, 2003, the District held a Team of Qualified Professionals (TQP) meeting and completed a TQP report that found the Student to be ineligible under IDEA due to the absence of a suspected educational disability (his grades were all passing), stated no further evaluations were warranted, and recommended discontinuing the referral. Per interviews with District staff, Section 504 eligibility was not considered at this meeting, despite the statement contained in the District's February 3rd letter to the Complainant, and the Complainant's reiteration of her request at the meeting. According to the Special Education Administrator, the TQP should have but did not consider the above-described pediatric neurological evaluation conducted on November 8, 2002.

On February 28, 2003, the Complainant filed her complaint with OCR.

On March 3, 2003, the District notified the Complainant that it was discontinuing the referral, because the information provided did not indicate the presence of an educational disability. The letter referenced inclusion of procedural safeguards that, according to the Special Education Administrator, addressed IDEA, but not Section 504, safeguards.

On March 10, 2003, OCR notified your office of the OCR complaint.

On March 20, 2003, OCR interviewed you and advised that the District move forward with considering Section 504 eligibility, if it had not already done so. You responded that the District had not yet held a Section 504 meeting, but that it would move forward with scheduling one promptly. You also requested that the Complainant resubmit, in writing, her request that the District consider Section 504 eligibility for the Student.

On March 20, 2003, OCR informed the Complainant of this conversation and request, via email, and the Complainant resubmitted her request for a Section 504 meeting.

On April 7, 2003, OCR interviewed the Special Education Administrator and again inquired whether the District was planning to move forward with considering Section 504 eligibility. He responded that he would try to schedule a meeting for the following week.

On April 23, 2003, the District convened a Section 504 meeting. The team determined that a physical impairment had been satisfactorily documented but that further testing was necessary to determine nexus and impact on learning.

On June 18, 2003, the District reconvened a Section 504 meeting (school physician's report still not in) and determined that they still were missing information necessary to determine eligibility, that is, the report from the school physician.

On July 7, 2003, OCR spoke with the Special Education Administrator to determine the status of the referral. The Administrator informed OCR that the team was still waiting to receive the report from the school physician. OCR later learned that the Complainant had attempted to schedule an appointment for the Student to be evaluated by the school physician, but that this doctor refused to see the Student, or in any way provide feedback to the team to assist in the eligibility determination. OCR found, as such, that the Section 504 referral process stalled and was still pending during the OCR on-site visit to NSES.

On August 4, 2003, OCR conducted an on-site visit to the District, to review the Student's records, interview administrators and staff, and tour NSES. OCR's findings with regard to the on-site and the District's data responses are as follows.

Findings

Issue #1: Whether the District failed to provide the Student with a free appropriate public education (FAPE) by failing to timely evaluate him, as required by Section 504 (34 C.F.R. Sections 104.33 and 104.35).

OCR found that over the past few years, the District has had a complex history of IAQ issues involving mold and elevated CO2 levels, and that through its own efforts and also through communication from concerned parents and teachers, the District was well aware of the building's problems, and has attempted to remediate them. OCR found that, from the period between October 2002 through February 2003, the Complainant requested, both orally and in writing, on numerous occasions, that the District consider the Student for Section 504 eligibility due to ongoing headaches in the classroom. As of November 8, 2002, the District had a letter constituting this request from the Complainant. OCR found that while the District initially attempted informally to accommodate the Student by moving him from Wing B to Wing A, that after this move proved unsatisfactory to the Student, the District did not attempt any further accommodation on behalf of the Student. OCR also found that in spite of repeated requests from the Complainant that the District consider Section 504 eligibility, during telephone conversations and a February 2003 TQP meeting, the District did not convene a Section 504 meeting until well after the Complainant filed her complaint with OCR and more than one month after OCR requested that the District move ahead with doing so.

OCR also found that while the District informed the Complainant prior to the February 2003 TQP meeting that Section 504 eligibility would be considered during the meeting, it was not. Further, OCR found that not only was Section 504 not considered, but that the District took the additional step of discontinuing the referral and taking no further action.

When asked why the District did not pursue the referral further after the Complainant withdrew her children from school with the intent to home school in early December until the physicians confer, certain District administrators indicated that they were not aware that there was anything more that needed to be done with respect to this Student, as he was being home schooled. OCR subsequently informed administrators during the on-site visit that under Section 504, it is incumbent upon districts to identify and evaluate any and all students residing within the district who are suspected of having a disability, whether or not they are in attendance at school.

While OCR found that the District did convene Section 504 meetings on April 23, and June 18, 2003, the outcome of these meetings is still pending at the time of this writing due to the inability of the team to obtain input from the school physician to assist with the eligibility determination.

Conclusion: Issue #1 (FAPE)

Based on OCR's finding that the District delayed considering the Student for Section 504 eligibility for six months between October 2002 and April 2003, and based on the District's lack of an educational justification for doing so, OCR determined that the District failed to provide the Student with a free appropriate public education (FAPE) by failing to timely evaluate him, as required by Section 504 (34 C.F.R. Sections 104.33 and 104.35).

Conclusion: Issue #2 (Environment)

As stated earlier in this letter, due to its premature nature, OCR did not make a determination with regard to this issue during this complaint investigation.

Conclusion: Issue #3 (Procedural Safeguards)

Based on information OCR obtained through interviews with District administrators, OCR determined that the District failed to provide the Complainant with procedural safeguards starting in October 2002 when the Complainant first requested that the Student be considered for Section 504 eligibility. The data submitted in the District's data response indicated that procedural safeguards were first referenced as an enclosure in the Special Education Administrator's March 3, 2003, letter to the Complainant. Based on this finding, OCR concluded that the District failed to provide the Complainant with procedural safeguards, as required by Section 504 (34 C.F.R. Section 104.36).

Conclusion: Issue #4 (Section 504 Coordinator)

During the on-site visit, OCR also identified a concern that certain administrators seemed uncertain about the identity of the District's Section 504 Coordinator and unfamiliar with the process of convening a Section 504 meeting and developing Section 504 plans. Based on this finding, OCR concluded that the District failed to inform at least its employees of the identity of its Section 504 Coordinator, as required by Section 504 (34 C.F.R. Sections 104.7(a) and 104.8).

Overall Conclusion

As stated at the beginning of this letter, you signed, on behalf of the District, the enclosed Agreement that commits the District to taking certain action steps in order to remediate the compliance concerns identified during the course of this investigation.

In summary, the enclosed Agreement requires that the District complete the following (For detailed information, please consult the Agreement):

- 1) Conclude the Section 504 eligibility determination process for the Student.
- 2) Ensure the selection of a mutually acceptable interim placement for the Student until such time as the Section 504 eligibility determination and any appeals are completed.
- 3) Reimburse the Complainant for educational expenses incurred from December 2002 until June 2003.
- 4) Conduct Section 504 evaluations in a timely fashion.
- 5) Ensure that Section 504 eligibility is considered in all instances, and especially, when referred students fail to qualify for IDEA eligibility.
- 6) Ensure distribution of Section 504 procedural safeguards.
- 7) Provide substantive Section 504 training to all staff and administrators.
- 8) Ensure timely and effective communication with parents regarding NSES IAQ issues.
- 9) Conduct periodic air quality CO2 testing and other necessary environmental testing of NSES, and share the results with parents, faculty and staff.
- 10) Consider Section 504 eligibility for any students who, for any reason, were referred for evaluation and not considered for Section 504 during the 2002-03 school year.

OCR will monitor the implementation of the enclosed Agreement, and expects that the District will submit periodic status reports, beginning on September 15, 2003.

In closing, we would like to thank you, Dr. Fricklas, and your staff for the time, assistance and spirit of cooperation extended to OCR staff during this investigation. You may contact Ms. Mary-Anne Khoulan at (617) 223-4148, or Mr. Thomas Mela at (617) 223-9679, if you have questions regarding this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert L. Pierce".

Robert L. Pierce
Program Manager

Enclosure

cc: Dr. Robert E. Fricklas
Administrator of Special Education
North Smithfield Public Schools
P.O. Box 72
Slatersville, RI 02876-0072

Resolution Agreement

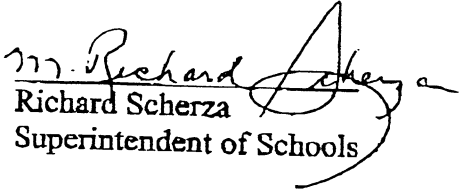
North Smithfield Public Schools (District)
Complaint No. 01-03-1068

- I. With regard to the Student who is the subject of this complaint, the District agrees to take the following actions:
- A. The District shall promptly discuss with the Complainant the selection of an appropriate physician, subject to mutual consent, to examine the Student in order to report to the Section 504 Team on the question whether the Student is eligible for accommodations and services pursuant to Section 504.
 - B. The District, after the physician submits a copy of the resulting report to the Complainant, shall promptly convene a meeting of the Section 504 Team, at a mutually convenient time and place, on the question whether the Student is eligible for accommodations and services pursuant to Section 504.
 - C. The District, until such time as the Complainant agrees to the accommodations and services, if any, resulting from the meeting(s) of the Section 504 Team, or until the Complainant has exhausted the administrative and judicial appeals available to her, shall negotiate with the Complainant, and implement, the interim placement of the Student in a mutually agreeable facility within the District or outside the District in a public or private school.
 - D. The District shall promptly reimburse the Complainant for the expenses she incurred by her purchase of educational materials and assessments during the period from December 2002 until June 2003.
- II. With regard to all students in the District who may have disabilities pursuant to Section 504, the District agrees to take the following actions:
- A. The District shall ensure that for all students who reside in North Smithfield, who, because of disability, need or are believed to need accommodations or services, are provided evaluations timely and as otherwise required by Section 504.
 - B. The District shall further ensure that all such students are provided evaluations, even if they are deemed ineligible to be evaluated or furnished services pursuant to the Individuals with Disabilities Education Act (IDEA) and Rhode Island special education laws.
 - C. The District shall further ensure that the parents and guardians of all such students will be provided with the procedural safeguards as required by Section 504.

- D. The District shall further ensure that, as required by Section 504, all participants, beneficiaries, applicants and employees will be notified of the person(s) designated by the District to coordinate its compliance with Section 504.
- E. The District, in order to facilitate implementation of these assurances, shall promptly provide materials and training to its faculty and staff, and will invite a representative of the Office for Civil Rights (OCR) to assist in the provision of such materials and training.
- F. The District shall promptly implement a plan for communication with the parents and guardians of students who may attend the North Smithfield Elementary School (NSES), including a monthly update on the status of the physical plant in the Principal's Newsletter, and in periodic parents' meetings during which parents can inform District personnel of any environmental concerns and suggestions.
- G. The District shall continue to conduct periodic air quality CO2 testing and other necessary environmental testing of NSES, and will share the results with parents and guardians of students and with its faculty and staff.
- H. The District shall promptly consider Section 504 eligibility for each student who, during the 2002-2003 school year at NSES, was referred for evaluation pursuant to the IDEA (and Rhode Island special education laws) but not evaluated under the IDEA (and Rhode Island special education laws) and Section 504, or was evaluated pursuant to the IDEA (and Rhode Island special education laws) and found ineligible under the IDEA (and Rhode Island special education laws) but not considered for Section 504 eligibility.

III. The District acknowledges that OCR will monitor the District's implementation of this Agreement, and shall provide OCR with status reports, starting on September 15, 2003.

This Agreement is entered into freely by the North Smithfield Public Schools. It does not constitute an admission of liability or wrongdoing in any way, but rather represents a good faith effort to address compliance concerns identified by OCR during the course of this complaint investigation.


Richard Scherza
Superintendent of Schools

August 27, 2003
Date

